

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Team # 5	CCRB Case #: 201310547	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/06/2013 8:15 PM, Monday, 02/10/2014	Location of Incident: Nostrand Avenue and Jefferson Street and the 79th Precinct stationhouse	Precinct: 79	18 Mo. SOL 5/6/2015	EO SOL 5/6/2015	
Date/Time CV Reported Fri, 11/08/2013 1:47 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/08/2013 1:47 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jamaal Miller	18339	939039	079 PCT
2. SGT David Leonardi	04982	930557	079 PCT
3. POM Andrew Ho	11741	941907	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT David Leonardi	Force: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79th Precinct stationhouse, Sgt. David Leonardi used physical force against § 87(2)(b)	
B.SGT David Leonardi	Abuse: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79th Precinct stationhouse, Sgt. David Leonardi strip-searched § 87(2)(b)	
C.SGT David Leonardi	Off. Language: At Nostrand Avenue and Jefferson Street in Brooklyn, Sgt. David Leonardi made remarks to § 87(2)(b) based upon race.	
D.SGT David Leonardi	Discourtesy: At Nostrand Avenue and Jefferson Street in Brooklyn, Sgt. David Leonardi spoke rudely to § 87(2)(b)	
E.POM Andrew Ho	Discourtesy: At Nostrand Avenue and Jefferson Street in Brooklyn, PO Andrew Ho spoke rudely to § 87(2)(b)	
F.SGT David Leonardi	Abuse: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79th Precinct stationhouse, Sgt. David Leonardi threatened § 87(2)(b) with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
G.POM Jamaal Miller	Abuse: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79th Precinct stationhouse, PO Jamaal Miller threatened § 87(2)(b) with the use of force.	
H.POM Jamaal Miller	Force: En route to and inside of the 79th Precinct stationhouse, PO Jamaal Miller used physical force against § 87(2)(b)	
I.POM Andrew Ho	Force: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79th Precinct stationhouse, PO Andrew Ho used physical force against § 87(2)(b)	
J.POM Andrew Ho	Abuse: Inside the 79th Precinct stationhouse, PO Andrew Ho threatened § 87(2)(b) with the use of force.	
§ 87(4-b) § 87(2)(g)	§ 87(4-b) § 87(2)(g)	
	§ 87(4-b) § 87(2)(g)	

### Case Summary

On November 8, 2013, § 87(2)(b) filed this complaint by phone with the CCRB. On November 6, 2013, at approximately 8:15 p.m., at the intersection of Nostrand Avenue and Jefferson Street in Brooklyn, § 87(2)(b) and his cousin, § 87(2)(b) were arrested by PO Jamaal Miller of the 79<sup>th</sup> Precinct. The following allegations resulted:

**Allegation A – Force: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79<sup>th</sup> Precinct stationhouse, Sgt. David Leonardi used physical force against § 87(2)(b)**

**Allegation B – Abuse of Authority: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79<sup>th</sup> Precinct stationhouse, Sgt. David Leonardi strip searched § 87(2)(b)**

**Allegation C – Offensive Language: At Nostrand Avenue and Jefferson Street in Brooklyn, Sgt. David Leonardi made remarks to § 87(2)(b) based upon race.**

**Allegation D – Discourtesy: At Nostrand Avenue and Jefferson Street in Brooklyn, Sgt. David Leonardi spoke rudely to § 87(2)(b)**

**Allegation E – Discourtesy: At Nostrand Avenue and Jefferson Street in Brooklyn, PO Andrew Ho spoke rudely to § 87(2)(b)**

**Allegation F – Abuse of Authority: At Nostrand Avenue and Jefferson Street in Brooklyn, Sgt. David Leonardi threatened § 87(2)(b) with the use of force.**

**Allegation H – Force: En route to and inside of the 79<sup>th</sup> Precinct stationhouse, PO Jamaal Miller used physical force against § 87(2)(b)**

**Allegation I – Force: En route to and inside of the 79<sup>th</sup> Precinct stationhouse, PO Andrew Ho used physical force against § 87(2)(b)**

**Allegation J – Abuse of Authority: Inside the 79<sup>th</sup> Precinct stationhouse, PO Andrew Ho threatened § 87(2)(b) with the use of force.**

§ 87(2)(g)

**Allegation G – Abuse of Authority: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79<sup>th</sup> Precinct stationhouse, PO Jamaal Miller threatened § 87(2)(b) with the use of force.**

§ 87(4-b) § 87(2)(g)

This case was not eligible for mediation. On December 2, 2013, an IAB referral was made to address allegations of false arrest, flaking, and missing property.

### Results of Investigation

#### Civilian Statements

**Complainant/Victim:** § 87(2)(b)

- *At the time of the incident, § 87(2)(b) a black male, 5'11" tall, 200 pounds, with black hair and brown eyes, was § 87(2)(b) old. § 87(2)(b)*

**IAB Statement**

§ 87(2)(b) was interviewed by Sgt. Robert Flynn of IAB on December 3, 2013, by telephone. His statements were generally consistent with those he made to the CCRB, with exceptions and additions noted below.

**CCRB Statement**

§ 87(2)(b) provided a statement in filing his complaint on November 8, 2013 (encl. [4A-D]), a telephone statement on November 14, 2013 (encl. [4E-F]), and an in-person statement on November 15, 2013 (encl. [4G-N]). § 87(2)(g)

§ 87(2)(b) left § 87(2)(b) with his cousin, § 87(2)(b) § 87(2)(b) drove his blue Honda sedan, license plate number § 87(2)(b) while § 87(2)(b) sat in the front passenger seat. § 87(2)(b) wore Timberland boots, a green jacket, a brown plaid button up shirt, green cargo pants, and a black backpack. § 87(2)(b) denied that he was intoxicated. § 87(2)(b) had pre-existing injuries from a vehicular accident several months prior, including two broken vertebrae, two compression fractures in the middle of his back, slipped discs, a torn rotator cuff, and a scar on the back of his neck. § 87(2)(b) also wore a cast on his right hand.

On Putnam Avenue between Franklin Avenue and Bedford Avenue, § 87(2)(b) and § 87(2)(b) drove past a black male motorist stopped at the side of the road. The motorist was seated on the rear bumper of a vehicle with his hands behind his back. § 87(2)(b) could not tell if he was handcuffed or not. Two or three officers, who § 87(2)(b) believed were the same officers who later pulled him over, stood in front of the unidentified male. There was also an unmarked black Chevrolet sedan on scene, which § 87(2)(b) believed to be a police vehicle. § 87(2)(b) was unable to get a good look at the scene because § 87(2)(b) continued driving. As § 87(2)(b) made a right turn onto Madison Street from Franklin Avenue, he told § 87(2)(b) that they were being followed by the same unmarked sedan. § 87(2)(b) denied that he or § 87(2)(b) committed any crimes or violations as they drove.

§ 87(2)(b) made a right turn on Nostrand Avenue and pulled immediately in front of the Crown Fried Chicken at the intersection with Jefferson Street. The unmarked vehicle pulled alongside them. Just before § 87(2)(b) exited the vehicle, he saw flashing lights, but he did not realize he was being pulled over. When § 87(2)(b) placed one foot on the street but was not yet standing, an officer, described by § 87(2)(b) as a white male supervisor and identified by the investigation as Sgt. David Leonardi of the 79<sup>th</sup> Precinct, approached his door and ordered him to sit back in the vehicle a few times (in his telephone statement, § 87(2)(b) said that Sgt. Leonardi immediately pulled him out of the vehicle upon approach). When Sgt. Leonardi asked § 87(2)(b) where he was going, he said, "What? What are you talking about? We're going to the chicken shop...I just got off of work." When § 87(2)(b) did not respond to Sgt. Leonardi's orders, Sgt. Leonardi simultaneously ordered him to exit the vehicle and pulled him out of the vehicle by right arm and jacket collar.

Sgt. Leonardi pushed § 87(2)(b) face-first against the side of the vehicle and held him in place by bracing his elbow against the back of § 87(2)(b)'s neck (in his telephone statement, § 87(2)(b) alleged that Sgt. Leonardi repeatedly struck him with his elbow). Sgt. Leonardi also at one point put both hands around the back and side of § 87(2)(b)'s neck and pushed

his head towards the vehicle. § 87(2)(b) did not remember whether or not this restricted his breathing. Sgt. Leonardi, without first handcuffing or frisking § 87(2)(b) reached into all of his pockets, including his wallet, identification, miscellaneous papers, a small pocket knife, blue in color and approximately three inches in length, which was not a gravity knife, and a four-inch long canister of pepper spray, whose concentration § 87(2)(b) did not know, which was attached to his keys. Sgt. Leonardi put all these items on the front passenger seat of the vehicle (in his intake statement, § 87(2)(b) alleged that Sgt. Leonardi threw these items onto the street). Sgt. Leonardi reached beneath the waistband of § 87(2)(b)'s jeans and patted around his groin. Sgt. Leonardi told § 87(2)(b) "I stopped you because you're a nigger" (in his intake statement, § 87(2)(b) reported his phrasing as, "You're being arrested for being a dumb nigger," and that PO Ho also called him an "ignorant nigger"). Sgt. Leonardi also called him a "pussy," and a "bitch" repeatedly, both at the stationhouse and on scene (in his intake statement, § 87(2)(b) alleged that it was PO Ho and PO Miller who called him a "pussy" and a "bitch" during the strip search at the stationhouse). Sgt. Leonardi told § 87(2)(b) that he had several open complaints and that "all they do is promote [him]" (in his telephone statement, § 87(2)(b) alleged that Sgt. Leonardi said that he "did not give a fuck," because he had so many open complaints). Sgt. Leonardi told § 87(2)(b) "I'll break your other fucking arm if you don't shut the fuck up," and, "Shut the fuck up. Nobody cares." § 87(2)(b) initially indicated that repeatedly throughout this incident, at both the stationhouse and on scene, PO Miller and PO Ho also threatened to "break his fucking arm," and both threatened to and actually did repeatedly slap his face, but later retracted this and said it was Sgt. Leonardi and PO Miller who made these threats (in his telephone statement, § 87(2)(b) alleged that PO Ho and PO Miller en route to the stationhouse told him, "Wait until we get the handcuffs off, we'll see how tough you are then," which § 87(2)(b) interpreted as a threat. In his IAB statement, § 87(2)(b) alleged that officers threatened to confiscate § 87(2)(b)'s vehicle because of how § 87(2)(b) was behaving). A crowd of 10 to 15 civilians gathered on the sidewalk and observed the incident. § 87(2)(b) yelled to the crowd to convey to them what Sgt. Leonardi had quietly said to him. § 87(2)(b) vocally protested his arrest but did not physically resist or make any movements.

Sgt. Leonardi repeatedly shoved § 87(2)(b) ultimately positioning him so that § 87(2)(b) stood facing the trunk of vehicle. § 87(2)(b) alternately said that he was handcuffed at the side of the vehicle or at its rear. PO Ho also handcuffed § 87(2)(b) at the trunk of the vehicle. The officers – § 87(2)(b) did not remember which ones – indicated to him that § 87(2)(b) was going to be arrested because they did not like how § 87(2)(b) was behaving. While standing at the trunk, § 87(2)(b) saw PO Ho enter the vehicle through the open driver's side door, though he could not further tell what he did inside the vehicle or where he looked (in his telephone statement, § 87(2)(b) alleged that Sgt. Leonardi and PO Miller entered the passenger side of the vehicle, though he did not see what they did inside). § 87(2)(b) alleged that officers planted narcotics in his vehicle. § 87(2)(b) denied attempting to throw any narcotics out of the vehicle, or possessing any contraband.

Although § 87(2)(b) did not remember seeing any other police vehicles on scene, he assumed that additional vehicles must have arrived, because he and § 87(2)(b) were not transported to the stationhouse in the same vehicle. § 87(2)(b) was placed in the aforementioned unmarked black sedan. Sgt. Leonardi from the driver seat threw an object at § 87(2)(b) striking him in his chest. § 87(2)(b) could not describe this object in shape, size, or hardness, and it caused no injury (in his telephone statement, § 87(2)(b) alleged that PO Ho threw it). PO Ho and PO Miller threatened § 87(2)(b) with the use of force, though § 87(2)(b) did not remember their specific phrasing (in his telephone statement, § 87(2)(b) said both of them told him, "Wait until the cuffs come off, let's see how tough you are then," which § 87(2)(b) interpreted as a threat of force). When they arrived at the 79<sup>th</sup> Precinct stationhouse, PO Miller and PO Ho both shoved him in the back from behind.

When PO Ho, PO Miller, and § 87(2)(b) arrived at the front desk of the stationhouse, § 87(2)(b) informed the desk officer, who he could not describe, that he was being harassed and falsely

arrested. PO Ho and PO Miller escorted § 87(2)(b) to the holding cells. Upon arrival at the holding cells, both of them again threatened to remove his handcuffs and “see what § 87(2)(b) was made of.” PO Ho and PO Miller then pushed § 87(2)(b) backwards by his shoulders and smacked his face. PO Ho and PO Miller pushed § 87(2)(b) front-first against a wall inside of the holding cells (in his telephone statement, § 87(2)(b) alleged that PO Ho also elbowed him in the back of his neck). § 87(2)(b) denied resisting but protested, “What are you doing?” There were other prisoners in the holding cells with § 87(2)(b) but he could not describe them and did not remember how many there were. PO Ho and PO Miller removed § 87(2)(b) to an isolated room at the rear of the stationhouse, where they made him remove all his clothing, bend over, and squat (in his intake statement, § 87(2)(b) also alleged that PO Ho and PO Miller blew kisses at him during the strip search). During the strip search, PO Ho cut off § 87(2)(b) s belt, which was sewn into his pants, damaging the fabric at the waistband. PO Ho also removed the drawstrings to § 87(2)(b) s hoodie, causing a tear to its collar, and removed his shoelaces. PO Ho removed all of § 87(2)(b) s business cards from his wallet and threw them onto the floor. § 87(2)(b) did not further see what happened to these business cards, but they were later returned to him by an officer. § 87(2)(b) denied having contraband secreted on his person. § 87(2)(b) was returned to the holding cells, where he was visited by Sgt. Leonardi, who reached through the cell bars and slapped § 87(2)(b) on the left side of his face.

§ 87(2)(b) did not sustain any injuries from the physical force that was used against him, though it aggravated the pain from his prior injuries. § 87(2)(b) attempted to seek medical attention while at Central Booking, as he requires medication for a heart condition, but decided not to after an officer told him that it would extend the duration of his arrest processing. § 87(2)(b) did not know which officer told § 87(2)(b) this, but did see that an ambulance was called to Central Booking.

§ 87(2)(b) alleged that \$40 he kept in his wallet and a second pre-paid cell phone he had on his person at the time of the incident were neither vouchered nor returned to him.

**Victim:** § 87(2)(b)

- *At the time of this incident, § 87(2)(b) was § 87(2)(b) old. § 87(2)(b) is a black man, 6'0" tall, 240 pounds, with black hair, brown eyes, and a beard.* § 87(2)(b)

(b)

**IAB Statement**

§ 87(2)(b) was interviewed by Sgt. Robert Flynn of IAB on December 3, 2013. His statement was generally consistent with his CCRB statements, with exceptions noted below.

**CCRB Statement**

§ 87(2)(b) provided a telephone statement on November 14, 2013 (encl. [4O-P]), and an in-person statement on February 25, 2014 (encl. [4Q-U]). § 87(2)(g)

§ 87(2)(b) denied committing any traffic violations or crimes. As he drove on Putnam Avenue between Franklin and Bedford Avenues, he saw two plainclothes officers who he could not further describe inside of an SUV, though he could not describe where they were exactly and could not describe the SUV in terms of color or make. The occupants of the SUV, who § 87(2)(b) could not describe except as black, were sitting on the bumper of the SUV.

§ 87(2)(b) noticed an unmarked black police vehicle, which he believed contained the same police officers who stopped the SUV, with its lights on immediately behind him one block before he pulled over on Nostrand Avenue between Jefferson Street and Hancock Street.

§ 87(2)(b) assumed that the police vehicle merely wanted to pass him, or was attempting to pull over a

different vehicle. § 87(2)(b) attempted to exit the vehicle and an officer – § 87(2)(b) – could not tell which – yelled to him, “Get back in the vehicle.” § 87(2)(b) complied (in his telephone statement, § 87(2)(b) also alleged that one of the officers – again, he could not tell which – told § 87(2)(b) and § 87(2)(b) to “Shut the fuck up,” before approaching their vehicle). Sgt. Leonardi approached the passenger side, while PO Ho approached § 87(2)(b)’s side and PO Miller stood at the rear of the vehicle. PO Ho never asked § 87(2)(b) for any documents (in his telephone statement, § 87(2)(b) alleged that Sgt. Leonardi from the passenger side asked him if he “had anything in the vehicle”).

Without prior issuing any instructions to § 87(2)(b) PO Miller approached the passenger side and assisted Sgt. Leonardi in pulling § 87(2)(b) out of the vehicle by his coat (in his telephone statement, § 87(2)(b) said that PO Miller only approached from the rear of the vehicle after Sgt. Leonardi had pulled § 87(2)(b) out). They shut the door after him, turned him, and pushed him front-first against the side of the vehicle. Sgt. Leonardi held § 87(2)(b) in place by placing his hands on the back of his neck. PO Miller held onto § 87(2)(b) by his clothing. Sgt. Leonardi told § 87(2)(b) and § 87(2)(b) “Shut the fuck up and do as you’re told.” Sgt. Leonardi and PO Miller then pushed § 87(2)(b) chest-first against the side of the vehicle. § 87(2)(b) did not make any movements with his body and never raised his voice. Sgt. Leonardi and PO Miller also struck § 87(2)(b) on his face, back, and chest repeatedly, though § 87(2)(b) could not tell if these were punches or slaps. Sgt. Leonardi called § 87(2)(b) a “nigger” (in his telephone statement, § 87(2)(b) reported the phrasing as “black nigger”). When § 87(2)(b) protested, Sgt. Leonardi said, “Nigger, nigger, nigger” (in his telephone statement, § 87(2)(b) alleged that Sgt. Leonardi said, “I already have seven complaints. Call whoever the fuck you want. I can do whatever the fuck I want”). PO Miller and Sgt. Leonardi searched § 87(2)(b) but § 87(2)(b) did not remember if this was before or after he was handcuffed. He did not believe any items were recovered from the search.

PO Ho brought § 87(2)(b) to the rear of the vehicle, handcuffed him, and searched him, recovering no items. PO Ho told § 87(2)(b) “Because your cousin wanted to be an asshole, you’re both going in.” When § 87(2)(b) asked why he was being arrested, PO Ho replied, “Shut the fuck up. We’ll think of something” (in his phone statement, § 87(2)(b) alleged that PO Ho said, § 87(2)(b) is acting like an asshole,” and, “I do what the fuck I want,” and that he punched him three times in the chest). § 87(2)(b) denied that he possessed narcotics.

While § 87(2)(b) stood at the rear of the vehicle, either Sgt. Leonardi or PO Ho – § 87(2)(b) – was unsure – entered the vehicle through its passenger side. Either one of them may also have entered through the driver side but § 87(2)(b) was unsure (in his telephone statement, § 87(2)(b) alleged that both Sgt. Leonardi and PO Ho opened the trunk on scene). PO Miller also entered the vehicle, but § 87(2)(b) was unsure at what point or which area of the vehicle he entered. § 87(2)(b)’s vehicle was ultimately driven back to the stationhouse. A marked police van containing three uniformed police officers drove § 87(2)(b) back to the stationhouse.

§ 87(2)(b) saw Sgt. Leonardi, PO Miller, and PO Ho both holding § 87(2)(b) by his clothing and pushing and shoving him into the stationhouse. Sgt. Leonardi said to § 87(2)(b) that he would “make [him] pay for being an asshole.” At the front desk inside the stationhouse, Sgt. Leonardi, PO Ho, and PO Miller hit § 87(2)(b) repeatedly before removing him to the holding cells (in his telephone statement, § 87(2)(b) said § 87(2)(b) was removed to a room at the rear of the stationhouse). § 87(2)(b) emphasized that he could not see much of the struggle but saw at least one of the officers – he could not tell which – hit him on the back of the head, though he could not tell if this was with a closed fist or an open palm. § 87(2)(b) attempted to shield himself from the blows by bending his head down, but otherwise made no movements. § 87(2)(b) did not know what, if anything, led to this use of force, but assumed that § 87(2)(b) was “giving them a hard time” by questioning them about why he was arrested. § 87(2)(b) did not remember officers issuing § 87(2)(b) any orders. § 87(2)(b) did not see him again until he arrived at Central Booking. § 87(2)(b) did not

remember hearing officers threaten either him or § 87(2)(b) with the use of force. § 87(2)(b) was unaware of § 87(2)(b) being strip searched.

§ 87(2)(b) requested medical attention at the stationhouse because his chest hurt and he had difficulty breathing due to his high blood pressure. EMS arrived to treat § 87(2)(b) (in his telephone statement, § 87(2)(b) said that an officer, a black male whose name § 87(2)(b) read from his uniform as “Williams,” told EMS that he did not need medical treatment, and that he did not actually receive any treatment until Central Booking, where he was seen by EMS). § 87(2)(b) also alleged that money he carried on his person, the quantity of which he could not remember, was never vouchered or returned to him (in his IAB statement, he said that no money was missing from him but the keys to the car he drove were never returned to him).

### **Attempts to Contact Civilians**

Between April 7 and April 19, 2014, three attempts were made to contact § 87(2)(b) and § 87(2)(b) § 87(2)(b) who may have witnessed the incident. The number for § 87(2)(b) was each time found to be disconnected, and each time the undersigned left a voice message for § 87(2)(b). Without further identifying information for either of them, their mailing addresses could not be located. Between October 8 and October 20, 2014, two letters were sent to four individuals, § 87(2)(b) and § 87(2)(b) who were identified through arrest records as possibly having been in the holding cells with § 87(2)(b). Attempts to locate telephone numbers for these individuals were unsuccessful and to date none of them have responded to the letters.

### **NYPD Statements:**

#### **Subject Officer: PO JAMAAL MILLER**

- *At the time of this incident, PO Miller was § 87(2)(b) old. PO Miller is a black male, 5’11” tall, 210 pounds, with black hair and hazel eyes.*
- *PO Miller is an officer of the 79<sup>th</sup> Precinct. On November 6, 2013, PO Miller worked from 2 p.m. until 10:35 p.m. PO Miller worked with PO Ho and Sgt. Leonardi. PO Miller was assigned to a Strategic Enforcement Team. PO Miller wore plainclothes and was assigned to unmarked vehicle 854, a blue Crown Victoria.*

### **Criminal Court Complaint (encl. [5A-D])**

§ 87(2)(b) was charged with § 87(2)(a) 160.50 § 87(2)(b) was charged with § 87(2)(a) 160.50. The criminal court complaint notes that § 87(2)(b) swerved in and out of traffic lanes. After pulling over the vehicle, PO Miller observed both defendants fidgeting inside the vehicle. § 87(2)(b) threw a glassine into the center console. § 87(2)(b) exited the vehicle and attempted to throw a glassine to the ground, but the glassine fell inside the vehicle. PO Miller instructed § 87(2)(b) to get back in the vehicle. PO Miller recovered a glassine from the center console and from the passenger side floor and a small folding knife clipped to § 87(2)(b) s pants which was less than four inches in length and was not a per se weapon.

### **OLBS and Complaint Reports (encl. [5E-L])**

The arrest report for § 87(2)(b) notes that he was observed failing to obey a clearly posted traffic control device and that upon a search incident to lawful arrest he was found to be in



possession of a controlled substance. The arrest report for § 87(2)(b) notes that he was a passenger in § 87(2)(b)'s vehicle and that a search incident to lawful arrest found him to be in possession of a controlled substance. Force was not used.

#### **Memo Book (encl. [5M-N])**

At 8:15 p.m., PO Miller had two under at Nostrand Avenue and Jefferson Street in Brooklyn. PO Miller had no further entries.

#### **IAB Statement**

PO Miller was interviewed at IAB on May 15, 2014. His statement as summarized by Sgt. Flynn in the IAB case file was generally consistent with his CCRB statement, with exceptions noted below.

#### **CCRB Statement (encl. [5O-S])**

PO Miller was interviewed at the CCRB on April 16, 2014. PO Ho was the operator of the vehicle. When PO Miller first noticed § 87(2)(b)'s vehicle, it was swerving in and out of the two lanes of southbound traffic on Nostrand Avenue without signaling. There were several other vehicles as well as construction on the right side of Nostrand Avenue, creating a hazardous condition. PO Miller could not describe § 87(2)(b)'s vehicle except that it was small. PO Miller did not remember where he was when he first observed the vehicle, but thought PO Ho followed it at a distance of one to two car lengths. PO Miller thought they were stationary when they first saw the vehicle but that they became mobile after observing its reckless driving. PO Miller denied stopping any vehicle immediately prior to stopping § 87(2)(b)'s vehicle, though he did not remember exactly what they were doing beforehand. PO Miller did not remember how fast the vehicle drove or how many times it switched lanes. PO Miller observed the vehicle for less than a minute before attempting to pull it over. PO Miller assumed Sgt. Leonardi and PO Ho made the same observation he did. PO Miller planned to warn and admonish the driver.

§ 87(2)(b) attempted to exit the vehicle before PO Miller was able to approach it. This is highly unusual and put PO Miller in fear of his safety. § 87(2)(b) moved less than a foot from the vehicle because his path was impeded by construction on the right side of the road. Once he was out of the vehicle, PO Miller identified himself as a police officer and told him to remain in the vehicle. § 87(2)(b) became irate, yelled, and cursed, saying, "The fuck you stopping us for?" PO Miller and Sgt. Leonardi approached § 87(2)(b) on the passenger side. When PO Miller was level with the rear passenger window, approximately four or five feet from the driver seat of the vehicle, he saw § 87(2)(b) opening his right hand palm-down and dropping a rectangular plastic envelope, marked with a red stamp and containing a white powder, approximately one inch long by one inch wide, onto the center console or gear shift. It was immediately identifiable to PO Miller as a glassine of heroin based upon his training and experience with arrests. PO Miller did not see where exactly it landed. Sgt. Leonardi was speaking to § 87(2)(b) and PO Ho was on the driver side. PO Miller did not know if either of them also saw § 87(2)(b) discarding the glassine and tapped on the roof of the vehicle saying to get their attention, saying, "Pull him out."

§ 87(2)(b) was not immediately handcuffed because at least initially it seemed only as though § 87(2)(b) should be arrested. PO Miller believed § 87(2)(b) was at some juncture found to be in possession of heroin, but PO Miller did not remember the circumstances of how it was recovered, or by whom, or at what point, or whether it was found in the vehicle or on his person. He thought it may have been found where § 87(2)(b) had been sitting in the vehicle, but was unsure. A folding knife was also recovered from his person, though again PO Miller remembered none of the circumstances of how it was recovered and could not further describe it. PO Miller was certain

that § 87(2)(b) was not frisked or searched before he was considered to be under arrest. Reviewing the arrest report narrative section for § 87(2)(b) did not refresh his recollection. Reviewing the arrest report for § 87(2)(b) refreshed his recollection in that he remembered § 87(2)(b) running a red light, though he did not remember where or precisely when this occurred. PO Miller did not remember which officer searched § 87(2)(b). He never reached beneath the waistband of § 87(2)(b)'s pants or saw any officer do so. § 87(2)(b) was never forcefully removed from the vehicle or pushed against it.

A crowd began to form on scene as soon as § 87(2)(b) was removed from the vehicle because of the manner in which he yelled. The crowd never came very close to the officers because of the construction at the side of the road. The crowd was loud and yelled, particularly after § 87(2)(b) turned to the crowd and yelled, "[The officers are] calling me a nigger!" PO Miller never called him such, or heard any officer do so. PO Miller never heard Sgt. Leonardi or any other officer say, "I stopped you because you're a nigger," "pussy," "bitch," "shut the fuck up," "because [your cousin] wants to be an asshole, you're both getting arrested," or, "I'll break your other fucking arm," and never made these statements himself.

PO Miller held § 87(2)(b) by his arm as he attempted to handcuff him. § 87(2)(b) kept attempting to turn around to yell in PO Miller's face. PO Miller told him, "Sir, I can't cuff you." § 87(2)(b) seemed particularly irate at Sgt. Leonardi. PO Miller had no interaction with § 87(2)(b). An additional vehicle was requested for transport after three to five minutes.

PO Miller went into the vehicle and looked on top of the center console area or gear shift where he'd seen § 87(2)(b) throw the glassine and recovered it from there. PO Miller did not remember searching any other area of the vehicle on scene and did not open any closed compartments on scene. PO Miller did not remember from what side he entered the vehicle. PO Miller did not remember any other officers entering the vehicle. PO Miller did not remember exactly where § 87(2)(b) and § 87(2)(b) were at the time the vehicle was searched, but the search occurred as they were waiting to back up for arrive, and he believed at least § 87(2)(b) was kept towards the rear of the vehicle during that time. The vehicle was driven back to the stationhouse and vouchered. PO Miller at the stationhouse searched the vehicle to determine whether further investigation needed to be done or if it could be returned to its owner. PO Miller did not believe any items were recovered at the stationhouse and no other officer assisted him in searching it there.

PO Miller walked § 87(2)(b) to the unmarked vehicle and sat him in the backseat. § 87(2)(b) did not want to be seated in the vehicle. PO Miller had to plead with § 87(2)(b) to seat himself in the backseat of the vehicle because he was not rear-cuffed due to his cast and it was therefore difficult to control him. Eventually PO Miller was able to seat him in the vehicle by pushing on his shoulder. PO Miller never elbowed § 87(2)(b), hit him in his chest, slapped him, or punched him, nor did he see any officer do so. PO Miller never threw anything at § 87(2)(b) or saw any officer do so.

§ 87(2)(b) did not provide violent physical resistance, but did refuse to move up the steps to the stationhouse as PO Ho and PO Miller held him by his arms and tried to escort him inside until he knew where his brother was. He continued to scream and yell. After PO Miller at least seven times told him to keep walking, § 87(2)(b) complied. There was no altercation with § 87(2)(b) either at the front desk of the stationhouse or in the holding cells. PO Miller never pushed him against a wall, brought him to the ground, punched him, or dragged him bodily to the holding cells, nor did he see any officer do so. PO Miller never removed § 87(2)(b)'s business cards from his wallet or scattered them on the floor, nor did he see any officer do so. During arrest processing, when PO Miller returned § 87(2)(b)'s wallet to him through the holding cell bars, § 87(2)(b) removed the business cards from the wallet and threw them at PO Miller, telling him that he needed to get a better haircut. PO Miller at this time learned § 87(2)(b) worked at § 87(2)(b).

PO Miller denied damaging any of § 87(2)(b)'s property, though he noted it was possible an officer did cut the strings out of his clothing, as prisoners are not permitted to carry any items into the holding cells that they may use to harm themselves. PO Miller did not believe § 87(2)(b) was strip searched, and did not discuss with PO Ho or Sgt. Leonardi any possibility of strip searching him. Aside from what he described, PO Miller denied using any physical force against § 87(2)(b) or seeing any officer do so. PO Miller never threatened either § 87(2)(b) or § 87(2)(b) or heard any officer do so. He did not use any profanity and never heard any officer do so.

**Subject Officer: SGT. DAVID LEONARDI**

- *At the time of this incident, Sgt. Leonardi was § 87(2)(b) old. Sgt. Leonardi is a white male, 6'3" tall, 260 pounds, with brown hair and blue eyes.*
- *Sgt. Leonardi is an officer of the 79<sup>th</sup> Precinct. On November 6, 2013, Sgt. Leonardi worked from 1:48 p.m. until 10:45 p.m. and was assigned to a Strategic Enforcement Team with PO Ho and PO Miller. Sgt. Leonardi was in plainclothes and was assigned to unmarked vehicle number 854, a blue Crown Victoria.*

**Memo Book (encl. [5T-V])**

At 8:15 p.m., Sgt. Leonardi conducted a car stop at Jefferson Street and Nostrand Avenue. There were two arrests by PO Miller. The passenger was irate and yelling obscenities.

**IAB Statement**

Sgt. Leonardi was interviewed by Sgt. Flynn of IAB on January 29, 2014. His statement as summarized by Sgt. Flynn in the IAB case file was generally consistent with his CCRB statement, with exceptions noted below.

**CCRB Statement (encl. [5W-Z])**

Sgt. Leonardi was interviewed at the CCRB on April 8, 2014. Sgt. Leonardi sat in the front passenger seat as PO Ho drove. PO Miller sat in the backseat on the driver side. Sgt. Leonardi did not remember the reason for the vehicle stop, where he was when he first observed § 87(2)(b)'s vehicle, or how long it was observed before they attempted to pull it over.

As Sgt. Leonardi exited his RMP, the front passenger, § 87(2)(b) also exited his vehicle. Initially the front right side of his body was turned towards Sgt. Leonardi. He turned to look back at the police vehicle, made eye contact with Sgt. Leonardi, and then "bladed," or turned his torso away, so that his back faced him. Sgt. Leonardi initially said, "Hey, excuse me." § 87(2)(b) ignored him and continued walking a few steps towards the sidewalk. Sgt. Leonardi raised his voice and said, "Stop, police," and asked him to sit back down in the vehicle. The fact that § 87(2)(b) exited the vehicle and did not, at least initially, heed Sgt. Leonardi's instructions, made him afraid for his safety. After the first or second time Sgt. Leonardi said, "Stop, police," § 87(2)(b) complied and turned to face Sgt. Leonardi. PO Ho and PO Miller approached the driver side. § 87(2)(b) refused to sit back in the vehicle and became irate. He yelled and screamed obscenities and demanded to know why he was stopped. His screaming caused a crowd of 10 people to gather on the sidewalk. Sgt. Leonardi noted that in his experience, the reaction of extreme anger has often been to "draw attention away from other things."

§ 87(2)(b) repeatedly asked, "Why are you stopping me? Is it because I'm black? You just call me what you want to call me." Sgt. Leonardi repeatedly said, "Relax, relax. You're getting all excited." § 87(2)(b) replied, "Fuck you." He gestured to the crowd and said, "Everybody see this? Get your cameras out." Sgt. Leonardi instructed him to put his hands on top of the vehicle because he feared for his own safety. § 87(2)(b) did so, but then four or five times moved his hands so they were at his sides, so Sgt. Leonardi had to tell him repeatedly to keep his hands on the

vehicle. Sgt. Leonardi denied pushing § 87(2)(b) against the side of the vehicle, elbowing him in the neck, holding him by his neck, or seeing an officer do any of those things. § 87(2)(b) also attempted to push himself bodily off the side of the vehicle. Sgt. Leonardi held § 87(2)(b) against the vehicle with his body weight to prevent § 87(2)(b) from turning on him. Though Sgt. Leonardi did not specifically recall, he may have braced his forearm or elbow against the top of § 87(2)(b)'s back to keep him in place. Sgt. Leonardi denied elbowing, shoving, pushing, or striking § 87(2)(b) or seeing any officer do so.

PO Ho indicated to Sgt. Leonardi that heroin had been observed in plain view inside the vehicle. PO Ho indicated to Sgt. Leonardi that both § 87(2)(b) and § 87(2)(b) should be placed under arrest by saying, “220 Charlie,” signifying narcotics. Sgt. Leonardi at the time had no further details about what exactly had been observed, or where, or how. Sgt. Leonardi remembered PO Ho told him after both § 87(2)(b) and § 87(2)(b) were handcuffed that the heroin had been observed in plain view in the center console. He did not remember observing any narcotics in the vehicle himself, or observing either § 87(2)(b) or § 87(2)(b) discarding any narcotics (in his IAB statement, he said he did not himself observe either § 87(2)(b) or § 87(2)(b) attempting to dispose of the narcotics, but was informed by either PO Ho or PO Miller that narcotics had been found). He did not remember being informed that either of them had done so. Neither § 87(2)(b) nor § 87(2)(b) was arrested based solely upon § 87(2)(b)'s irate behavior. Sgt. Leonardi did not see how § 87(2)(b) was handcuffed.

Once this was communicated to Sgt. Leonardi, he understood § 87(2)(b) was to be arrested and therefore frisked and searched him. Sgt. Leonardi did not remember if anything was recovered from this search of his person. § 87(2)(b) became “fidgety” during the search, which Sgt. Leonardi characterized as a repeated thrusting of his groin towards the car away from Sgt. Leonardi as he attempted to frisk the front of his waistband. Sgt. Leonardi believed § 87(2)(b) also verbally refused to be searched but was unsure. Sgt. Leonardi was eventually able to pat his front waistband and groin, and felt nothing that increased his suspicions of him. Sgt. Leonardi denied reaching beneath the waistband of § 87(2)(b)'s pants, feeling his groin area, or exposing his underwear while searching him, and did not see any officer do so.

§ 87(2)(b) did not resist being handcuffed, but continued to yell. § 87(2)(b) also attempted to turn around to face Sgt. Leonardi. Sgt. Leonardi attempted to pull his arms behind his back slowly and gently because of his cast. PO Miller assisted him in handcuffing § 87(2)(b) by holding his other arm. Sgt. Leonardi did not know what, if anything, occurred in the unmarked police vehicle because he drove § 87(2)(b)'s vehicle back to the stationhouse. He did so because the vehicle could not be left unattended on scene and because it was part of an investigation since narcotics were found inside of it. Sgt. Leonardi entered the vehicle only to drive it back to the stationhouse. Aside from visually inspecting the area immediately surrounding the driver seat, Sgt. Leonardi did not search the vehicle. Sgt. Leonardi thought PO Ho recovered heroin from the center console on scene and vouchered it, but he was unsure.

Though § 87(2)(b) continued to yell at the stationhouse, there was never any physical struggle with him there. Sgt. Leonardi never slapped, punched, or pushed § 87(2)(b) against a wall, whether at the front desk or in a holding cell. Sgt. Leonardi never saw any officer do so. Sgt. Leonardi never threw § 87(2)(b)'s business cards onto the floor, or saw any officer do so. Sgt. Leonardi believed § 87(2)(b) was strip searched at the stationhouse, though he was unsure. After checking § 87(2)(b)'s prior arrest history, Sgt. Leonardi saw that he had a history of narcotics possession. This, combined with the fact that heroin was found in the vehicle, his irate behavior, his initial refusal to comply with instructions, and his behavior while being searched on scene, was why Sgt. Leonardi authorized a strip search. Sgt. Leonardi initially said he did not know where on § 87(2)(b)'s body the contraband might have been secreted but then said he thought it may have been in the front area of his waistband or pants. The strip search returned negative results.

Though it should have been documented in the command log, Sgt. Leonardi did not remember if this was in fact done.

At no point during this incident did Sgt. Leonardi ever make the following statements: “Nigger,” “I stopped you because you’re a nigger,” “pussy,” “bitch,” “Because your cousin wanted to be an asshole, now you’re both getting arrested,” “shut the fuck up,” “I’ll break your other arm if you don’t shut the fuck up,” or, “shut the fuck up, nobody cares.” Sgt. Leonardi never threatened § 87(2)(b) with the use of force or heard any officer do so. Sgt. Leonardi denied using or hearing officers use profanity during this incident.

**Subject Officer: PO ANDREW HO**

- *At the time of this incident, PO Ho was § 87(2)(b) old. PO Ho is an Asian male, 6’1” tall, 230 pounds, with brown hair and eyes.*
- *PO Ho is an officer of the 79<sup>th</sup> Precinct. On November 6, 2013, PO Ho worked from 2 p.m. until 10:35 p.m. PO Ho was assigned to a Strategic Enforcement Team with Sgt. Leonardi and PO Miller. PO Ho was in plainclothes and was assigned to unmarked vehicle 854, a blue Crown Victoria.*

**Memo Book (encl. [5AA-AB])**

At 8:15 p.m., PO Ho noted a vehicle stop at the corner of Jefferson Street and Nostrand Avenue and PO Miller made two arrests for § 87(2)(a) 160.50.

**IAB Statement**

PO Ho was interviewed by Sgt. Flynn of IAB on January 29, 2014. His statement as summarized by Sgt. Flynn in the IAB case file was generally consistent with his CCRB statement, with exceptions noted below.

**CCRB Statement (encl. [5AC-AG])**

PO Ho was interviewed on September 18, 2014. § 87(2)(g)

PO Ho was driving southbound on Nostrand Avenue and had a green light when § 87(2)(b) made a right turn from an unknown street onto Nostrand Avenue. Because PO Ho had a green light, he believed § 87(2)(b) must have run a steady red light in order to complete the turn. PO Ho did not remember exactly where § 87(2)(b)’s vehicle was in relation to his own except that § 87(2)(b) was ahead. § 87(2)(b) was also driving recklessly by changing lanes without signaling and driving at a speed higher than the general flow of traffic, though PO Ho could not say whether he was driving over the speed limit. PO Ho did not remember how many times he swerved or changed lanes without signaling. His erratic driving behavior led PO Ho to believe he was possibly intoxicated. PO Ho did not remember how long he observed him before attempting to pull him over, but thought it was within a couple of blocks of where the initial violation was observed. When PO Ho pulled him over, he intended possibly to issue him a summons but also to investigate him for signs of intoxication. PO Ho did not discuss his observations with Sgt. Leonardi or PO Miller.

As PO Ho approached the driver side, § 87(2)(b) inched his vehicle slowly forward, leading PO Ho to fear for his safety. When PO Ho was level with the rear driver’s side window, which was rolled all the way down, he saw § 87(2)(b) reach into one of his pockets, though he did not remember which, with his right hand. It appeared as though he removed something from his pocket, though PO Ho did not actually observe an object at this time. PO Ho saw § 87(2)(b) reach for the center console. He did not remember whether § 87(2)(b) opened the center console or not. PO Ho saw him place something in or on the console, though again he could not see what the

“something” was as he approached. To PO Ho, it looked as though § 87(2)(b) was attempting to conceal whatever it was he held. PO Ho did not remember § 87(2)(b) getting out of the vehicle before officers approached or being told by any officer to remain in the vehicle (in his IAB statement, PO Ho said he did not observe either defendant try to discard narcotics, but knew PO Miller did).

When PO Ho approached, he ordered § 87(2)(b) to put the vehicle in park and to get out because his driving behavior and the furtive movements he observed put him in fear for his safety. § 87(2)(b) was compliant. Once he exited, PO Ho was immediately able to see from outside the vehicle that there was a glassine, or an inch and a half long by inch-wide plastic bag, containing a white powder which PO Ho believed to be heroin on the center console in exactly the same place he had seen § 87(2)(b)'s hand. PO Ho was able to identify the heroin as such based upon his training and experience. Nostrand Avenue was dark at this time of night but there was lighting from storefronts and there may have been a light on inside the vehicle because the door was open. PO Ho did not remember if PO Miller or Sgt. Leonardi also observed this.

PO Ho handcuffed § 87(2)(b) who was compliant. PO Ho did not remember his body making contact with the vehicle, though he noted it was possible that he did so in the course of being rear cuffed. PO Ho then escorted him to his police vehicle. PO Ho saw that Sgt. Leonardi and PO Miller were handcuffing § 87(2)(b) though at this juncture he did not know why he was being handcuffed. Either Sgt. Leonardi or PO Miller later told him that § 87(2)(b) was in possession of heroin and a knife, but PO Ho did not know how these were found or by whom. PO Ho never saw either of them frisking or searching § 87(2)(b). PO Ho did not remember how § 87(2)(b) behaved. PO Ho did not recall seeing Sgt. Leonardi or PO Miller push § 87(2)(b) against the side of the vehicle or a wall, elbow him, shove him, punch him, or slap him, and denied doing so himself, whether on scene or at the stationhouse. PO Ho emphasized that he was focused upon § 87(2)(b) and did not have any interaction with, or witness any interaction with, § 87(2)(b). When questioned about the various allegations of profanity and threats, PO Ho said he never heard or said such statements.

PO Ho on scene searched the lunge-able areas of the vehicle and recovered the heroin. He thought PO Miller may have also entered the vehicle through the front passenger door, but was unsure. The vehicle was later driven to the stationhouse. A more detailed inspection of the vehicle was conducted and the vehicle was vouchered. PO Ho did not remember how § 87(2)(b) behaved at the stationhouse and did not remember any physical altercation with him there. PO Ho did not remember if § 87(2)(b) was strip searched and had no notation of such in his memo book. § 87(2)(b) showed no signs of being intoxicated and no attempt was made to test his sobriety. When PO Ho was shown the arrest report for § 87(2)(b) he indicated that PO Miller did not properly complete it, as it was not a search incident to lawful arrest that led to the recovery of the contraband.

### **NYPD Documents**

#### **Medical Treatment of Prisoner Form (encl. [6C])**

The medical treatment of prisoner form was completed for § 87(2)(b) by Sgt. William Groneman of Brooklyn Central Booking and notes that he has high blood pressure and a cardiac condition. There is no notation pertaining to any treatment given.

#### **Command Log (encl. [6D])**

The command log notes that both § 87(2)(b) and § 87(2)(b) were in normal condition. There is no notation of a strip search.

#### **Property Vouchers (6E-O)**

PO Miller vouchered one glassine envelope containing heroin and a blue knife belonging to § 87(2)(b). PO Miller vouchered one glassine envelope containing heroin and

belonging to § 87(2)(b) PO Miller also vouchered the Honda Civic § 87(2)(b) drove, which was rotation towed and returned to his daughter, the true owner of the vehicle. The vehicle was inspected by PO Miller. Cell phones were also vouchered for both defendants.

**EVENT (encl. [6AD-AF])**

No EVENT report for this incident could be located.

**Other Evidence**

**Results of BADS Search (encl. [6AM-AN])**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Results of IAB Investigation**

Sgt. Flynn of IAB investigated allegations of flaking, missing property, and disputed arrest. He unsubstantiated all allegations pertaining to the November 6, 2013, incident.

**Results of Field Work and Attempts to Obtain Video Footage (encl. [8A])**

On December 2, 2013, the undersigned contacted Butterfly International Dominican Hair Salon, located at 464 Nostrand Avenue in Brooklyn. The location closes at 6 p.m. and therefore no employees were present to witness the incident. The manager provided the contact information for “Security Whiz,” the company that manages their video footage. An employee of “Security Whiz” informed the undersigned that video footage from that location was retained for three weeks and therefore had been expunged. On January 22, 2014, the undersigned Soween Natural Salon, located at 466 Nostrand Avenue, and was informed that they have no video cameras and that the salon closes every day at 7 p.m. and therefore there were no witnessing employees. Between January 24, 2014 and February 19, 2014, the undersigned attempted to contact the manager of the Crown Fried Chicken located at 468 Nostrand Avenue, who never contacted the undersigned. On April 4, 2014, upon conducting field work to the location, the manager noted that video footage was retained for only one month. The manager, “§ 87(2)(b)” had no recollection of this incident. He provided the names and telephone numbers for two employees who may have been working at the time. Attempts to contact these employees are summarized above.

**Arrest for Incident and Disposition**

- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]

## Status of Civil Proceedings

- As of September 12, 2014, more than six months after the filing deadline, neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim about this incident (encl. [9A]).

### Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. [2L]).
- § 87(2)(b) has filed the following CCRB complaints (encl. [2K]):
  - § 87(2)(b)
  - 
  -

### Subject Officers CCRB History

- Sgt. David Leonardi has been a member of the service for 12 years and there are four substantiated CCRB allegations against him. (encl. [2A-D]). To date, 57 allegations have been pled against him in 20 CCRB cases.
  - In case 200410123, an allegation of property damage was substantiated and the Board recommended the command discipline. Sgt. Leonardi received command discipline – A.
  - In case 201107817, allegations of a stop, frisk, and search of person were substantiated. The Board recommended charges and Sgt. Leonardi received instructions.
- PO Jamaal Miller has been a member of the service for 9 years and there are four substantiated CCRB allegations against him (encl. [2E-G]) in CCRB case 201210869 for a stop, search, discourtesy, and threat of force. The Board recommended charges and the NYPD disposition and penalty are pending. To date, 63 allegations have been pled against him in 14 CCRB cases, including the following:
  - *Physical Force*: In CCRB case 200915288, a victim alleged that PO Miller punched him twice in the jaw. The investigation recommended a disposition of unsubstantiated and the Board closed it as unfounded. In CCRB case 201303121, the victim alleged that PO Miller punched him above his left eye, an allegation which was closed as unfounded.
  - *Chokehold*: In CCRB case 200910783, the victim alleged that PO Miller squeezed his hand around her throat, restricting her breathing, an allegation which was closed as unsubstantiated.



- *Threat of Force*: In CCRB case 201307739, the victim alleged that PO Miller said, “We’ll see how tough you are when we get these cuffs off.” In CCRB case 201311584, the victim alleged PO Miller in the holding cells attempted to provoke him into fighting by telling him to “swing,” and referring to him as a “pussy.” The dispositions of these allegations are pending. In CCRB case 201210869, the victim alleged that PO Miller threatened to break his wrist, an allegation which was substantiated and referred to the CCRB Administrative Prosecution Unit. In CCRB case 201303121, the victim alleged PO Miller said he was lucky that he only got “ass whooped” and was not shot, an allegation which was closed as unsubstantiated.
- *Strip-search*: In CCRB cases 200713355, 201403108, and 201408861, the victims alleged that PO Miller strip searched them. The allegation in the first case was closed as unsubstantiated while the allegations in the last two are pending.
- *Discourtesy*: In CCRB case 200910783, the victim alleged PO Miller called her a “bitch,” an allegation was unsubstantiated, though the investigator noted that PO Miller casually used profanity during his CCRB interview. Case 201210869 was discussed above for the substantiated discourtesy allegation against PO Miller. The victims in CCRB case 201406409 also made allegations of profanity, the dispositions of which are pending.
- § 87(4-b) § 87(2)(g) [REDACTED]
- PO Andrew Ho has been a member of the service for 8 years and there is one substantiated CCRB allegation against him (encl. [2H-J]).
  - In case 201212149, an allegation of a stop was substantiated. The Board recommended charges.

### Conclusion

#### Identification of Subject Officers

Sgt. Leonardi, PO Miller, and PO Ho acknowledged their involvement in this incident.

#### Investigative Findings and Recommendations

§ 87(2)(g) [REDACTED]

[REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

**Allegation A – Force: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79<sup>th</sup> Precinct stationhouse, Sgt. David Leonardi used physical force against § 87(2)(b)**

**Allegation H – Force: En route to and inside the 79<sup>th</sup> Precinct stationhouse, PO Jamaal Miller used physical force against § 87(2)(b)**

**Allegation I – Force: En route to and inside the 79<sup>th</sup> Precinct stationhouse, PO Andrew Ho used physical force against § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) alleged that Sgt. Leonardi pulled him from the vehicle, pushed him against its side, repeatedly elbowed him in the back of his neck, and slapped him repeatedly on his face. When placed in the unmarked police vehicle, PO Ho and PO Miller punched him repeatedly in his chest. Once inside the holding cells at the 79<sup>th</sup> Precinct stationhouse, PO Ho and PO Miller shoved him, pushed him against a wall, and repeatedly slapped him in his face. Sgt. Leonardi also visited him in the holding cells and again slapped his face. Although § 87(2)(b) acknowledged verbally protesting the officers and raising his voice, he denied physically resisting at any point.

§ 87(2)(b) corroborated that Sgt. Leonardi pushed § 87(2)(b) against the side of the vehicle. He alleged that Sgt. Leonardi and PO Miller at the passenger side of the vehicle struck § 87(2)(b) in his face, back, and chest, though he could not tell if these were slaps or punches. Upon arrival at the front desk inside the 79<sup>th</sup> Precinct stationhouse, Sgt. Leonardi, PO Ho, and PO Miller all repeatedly hit § 87(2)(b) before they escorted him down the hallway to the holding cells. § 87(2)(b) attempted to shield himself from the blows by bending his head down but otherwise made no movements. § 87(2)(b) never physically resisted the officers and at no point during the incident raised his voice, though he did protest the officer's actions. After the front desk, § 87(2)(b) did not see § 87(2)(b) again until Central Booking. Attempts to contact witnesses returned no results.

§ 87(2)(b) did not allege that he sustained any injuries or sought medical treatment as a result of the physical force used, only that the pain to his pre-existing injuries was aggravated.

Sgt. Leonardi acknowledged that he may have pushed § 87(2)(b) front-first against the side of the vehicle to prevent him from turning around. Sgt. Leonardi denied elbowing, slapping, punching, shoving, or otherwise using physical force against § 87(2)(b) or seeing officers do so. Although § 87(2)(b) repeatedly attempted to push his body off of the vehicle and raised his voice, Sgt. Leonardi did not characterize this as resistance because he did not refuse to put his hands behind his back to be handcuffed. PO Miller, who said he participated in handcuffing § 87(2)(b) at the passenger side of the vehicle, confirmed that § 87(2)(b) repeatedly tried to turn to face the officers, which made it more difficult to handcuff him, and that § 87(2)(b) raised his voice. PO Ho did not remember how § 87(2)(b) behaved. PO Ho and PO Miller denied slapping, punching, shoving, or otherwise using any physical force against § 87(2)(b) whether en route to or at the stationhouse, and denied seeing any officers do this.

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Abuse of Authority: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79<sup>th</sup> Precinct stationhouse, Sgt. David Leonardi strip searched § 87(2)(b)**

§ 87(2)(b) alleged that during the search of his person on scene, Sgt. Leonardi reached underneath the waistband of his pants and patted around his groin. § 87(2)(b) said Sgt. Leonardi was the only officer searching him on scene. He also alleged that at the 79<sup>th</sup> Precinct stationhouse, PO Ho and PO Miller brought him to a room at the rear of the stationhouse and strip searched him, yielding no results. § 87(2)(b) did not corroborate that Sgt. Leonardi reached beneath the waistband on his pants during the search. § 87(2)(b) said PO Miller and Sgt. Leonardi searched § 87(2)(b) on scene.

Sgt. Leonardi denied reaching beneath the waistband of § 87(2)(b)'s pants on scene. Sgt. Leonardi authorized a strip search of § 87(2)(b) on the basis of a) his irate behavior on scene, which, in his experience, is often an attempt by the subject to distract the officers from a more serious offense, b) the furtive movements he initially made on scene, including his initial attempt to walk away from the vehicle and blading his body away from Sgt. Leonardi, c) his initial non-compliance with Sgt. Leonardi's instructions to remain in the vehicle, d) his reluctance to be frisked and searched on scene, particularly around the front of his waistband, and his attempts to pull his groin away from Sgt. Leonardi as he frisked that part of his body, and e) his arrest history, which Sgt. Leonardi accessed at the 79<sup>th</sup> Precinct stationhouse and which he saw included a history of narcotics possession and sales. PO Ho and PO Miller did not recall either strip searching § 87(2)(b) or having any reason to believe he had contraband secreted on his person. Neither of them saw Sgt. Leonardi reach beneath the waistband of § 87(2)(b)'s pants on scene. A BADS search shows that though § 87(2)(b) does not have an extensive history of narcotics-related arrests (particularly relative to § 87(2)(b) though he has multiple arrests pertaining to crimes of violence, § 87(2)(b)

According to Patrol Guide Procedure 208-05 (encl. [1C-E]) regarding strip search guidelines, a strip search may be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they will not be discovered by previous search methods. Other factors in determining the appropriate basis exists for a strip search include the nature of the crime, arrest circumstances, the subject's reputation, the subject's suspicious behavior, acts of violence or information showing pertinent criminal propensities, and discoveries yielded through prior searches. Sarnicola v. Westchester County, 29 F.Supp.2d 259 (2002) (encl. [1F-Y]).

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Offensive Language: At Nostrand Avenue and Jefferson Street in Brooklyn, Sgt. David Leonardi made remarks to § 87(2)(b) based upon race.**

**Allegation D – Discourtesy: At Nostrand Avenue and Jefferson Street in Brooklyn, Sgt. David Leonardi spoke rudely to § 87(2)(b)**

**Allegation E – Discourtesy: At Nostrand Avenue and Jefferson Street in Brooklyn, PO Andrew Ho spoke rudely to § 87(2)(b)**

**Allegation F – Abuse of Authority: At Nostrand Avenue and Jefferson Street in Brooklyn, Sgt. David Leonardi threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that Sgt. Leonardi told him, “I stopped you because you’re a nigger,” repeatedly said, “nigger,” called him a “pussy,” and a “bitch,” and told him to “shut the fuck up.” He also alleged that both Sgt. Leonardi on scene told him, “I’ll break your other fucking arm.” § 87(2)(b) corroborated that Sgt. Leonardi called § 87(2)(b) a “nigger,” and that he told him, “shut the fuck up.” He did not remember any officer threatening § 87(2)(b) with the use of force and otherwise did not corroborate § 87(2)(b)’s allegations of profanity. § 87(2)(b) also alleged that PO Ho told him that because § 87(2)(b) was “being an asshole,” § 87(2)(b) was going to be arrested, and told him to “shut the fuck up.” Sgt. Leonardi, PO Ho, and PO Miller all denied making these statements, or hearing any officers make them.

§ 87(2)(g)

**Allegation G – Abuse of Authority: At Nostrand Avenue and Jefferson Street in Brooklyn, and inside the 79<sup>th</sup> Precinct stationhouse, PO Jamaal Miller threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that on scene, PO Miller told him that he would “break [his] other fucking arm,” and that inside the holding cells of the 79<sup>th</sup> Precinct stationhouse, PO Miller said, “We’re going to take off the handcuffs and see what you’re made of.” § 87(2)(b) felt PO Miller was attempting to provoke him into fighting.

§ 87(2)(b) did not remember any officers threatening § 87(2)(b).

PO Miller denied making this statement. PO Ho and Sgt. Leonardi denied hearing any officer make this statement.

In CCRB case 201311584, an incident that occurred fifteen days after the incident question, the victim said PO Miller attempted to incite him to fight inside the holding cells by telling him to “swing,” and referring to him as a “pussy.” In that case, allegations of discourtesy were substantiated. In CCRB case 201307739, the victim alleged that PO Miller said, “We’ll see how tough you are when we get these cuffs off.” Case 201307739 and 201311584 are pending CCRB Board Review. In CCRB case 201210869, the victim and a witness alleged that PO Miller threatened to break a civilian’s wrist. This allegation was substantiated and is pending with the CCRB Administrative Prosecution Unit (APU).

Members of the service are required to use the minimum necessary force under appropriate circumstances in their dealings with civilians. Patrol Guide Procedure 203-11 (encl. [1A-B])

§ 87(2)(g)

§ 87(2)(g)

**Allegation J – Abuse of Authority: Inside the 79<sup>th</sup> Precinct stationhouse, PO Andrew Ho threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that PO Ho inside the 79<sup>th</sup> Precinct stationhouse also threatened to take off the handcuffs and “see what [he was] made of.” § 87(2)(b) did not remember any officers threatening § 87(2)(b). PO Ho denied threatening § 87(2)(b) or hearing any officer do so, as did PO Miller and Sgt. Leonardi.

§ 87(2)(g)

§ 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_

	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date